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SUBJECT: Gender, Age, Beauty and "Unlucky Name" Discrimination

Ref: Beijing 4467

11. SUMMARY: Students, officials and professors at several South Chinese universities lamented the failure of China's new Labor Contract Law (ref) to eliminate discrimination based on gender, age, and, of all things, beauty, the latter a requirement that usually includes a minimum height. The female students in particular were offended by hiring practices that excluded them from "male only" jobs, such as middle and high school science and math teachers. Several students thought it nonsensical that in 2007 the Guangdong courts had upheld employers' rights to terminate employees with "unlucky" names. Discrimination in employment, sometimes for reasons that totally elude us, remains common in China. Beijing plans to address this through an Employment Promotion Law, currently under consideration by the National People's Congress, but even with a new law, it will take a considerable amount of education and persuasion to eliminate certain forms of discrimination. . End Summary

Gender Discrimination - Completely Absurd

12. In informal discussions with PAO, a number of students, officials and professors at local universities lamented the failure of the recently passed Labor Contract Law (ref) to outlaw discrimination based on gender, age and beauty. (Note: discrimination based on ethnicity, gender, race and religion is already illegal under the 1994 Labor Law. End note.) Our interlocutors argued that people should be allowed to decide for themselves what jobs were suitable - or not. A number of the women stated that the designation "male only" made it difficult - if not impossible - for them to find jobs in fields requiring a science background, as with middle and high school teaching jobs reserved for men at a recent job fair. Asked why companies and schools adopted "male only" policies, our contacts offered a number of reasons, including traditional views and employers fear that women would leave after they had a baby. With regard to the latter, women can retain their jobs for up to six months after giving birth; we have no statistical information on how many do not return.

Age Discrimination - Some Merit

13. Women believed that they were most disadvantaged by age discrimination. Reportedly if a woman was too young and not yet married, employers would be concerned that she would leave after

getting married and having a child. On the other hand, if she was in her mid-thirties and already had a husband and child, employers believed that she would be taking time off to care for her family. Several of the professors pointed out that because they worked at a university they were not forced to retire at the current mandatory retirement age - men age 60 and women age 55. Not unexpectedly, the young people we spoke with believed that a mandatory retirement age made sense, because if people never left there would be few jobs for new hires.

Beauty Discrimination - Worth Considering

¶4. For both men and women, the most onerous aspect of the beauty qualification was that employers were free to stipulate a minimum height. The minimum height had nothing to do with the requirements of the job; it was simply a component of beauty. As for other elements of beauty, there was a consensus that "everyone" knew who was and was not good-looking. Somewhat surprisingly, our interlocutors seemed to accept this type of discrimination. One student stated that it was a scientific fact that students learned more from good-looking teachers than from those who were beauty challenged and therefore good-looks was a reasonable requirement. A female student said that it was commonsense that an ugly person could not deal with the public - potential customers would not respond well.

"Unlucky Name" Discrimination - Now that's Nonsensical

¶5. In line with the discussions of what types of discrimination were rational, several business students roundly criticized the practice of "unlucky name" discrimination. Recently the Guangdong courts had

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upheld an employer's right to fire an employee with the name Xiong, one pronunciation of which means bear. The employer believed that this employee had caused him to lose money in the stock market (bear versus bull market) and therefore had to go. In another case, a long time employee was let go because his name was pei, one pronunciation of which means to lose money. The students pointed out that in Guangdong employees had their names looked at from both a Mandarin and Cantonese perspective. All agreed that these court rulings were nonsensical but there was no way for the fired employees to appeal the court's decision.

Comment

¶6. Discrimination in employment remains common in China, even based on attributes forbidden by the 1994 Labor Law. In a recent 10-city survey published by Beijing's China University of Politics and Law, 85 percent of respondents said discrimination existed in the workplace, with over 50 percent acknowledging "serious discrimination." China hopes to address the discrimination problem (in keeping with its December 2006 ratification of ILO Convention 111 on Discrimination in Employment and Occupation) through an Employment Promotion Law (EPL), which is now under consideration by the National People's Congress. The EPL would expand the definition of discrimination to outlaw discrimination based on age and bodily disfigurement. Academics are also agitating to cover such characteristics as place of origin and physical appearance as well. The prevalence today of forms of discrimination that are already illegal, however, suggests that even when China passes the EPL, creating a non-discriminatory labor market will require greater enforcement efforts, as well a public education campaign to change the thinking and practices of employers.

¶7. (U) This cable was coordinated with Embassy Beijing's Labor Attache.

GOLDBERG